

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY**

CASE NO. 297

CIVIL ACTION

**IN RE MIRENA
LITIGATION**

MEMORANDUM DECISION

FILED

AUG 26 2014

**BRIAN R. MARTINOTTI
J.S.C.**

Before this Court are 4 motions to dismiss without prejudice for failure to provide a Plaintiff Fact Sheet on the following Plaintiffs: Lana Watson, Carissa Carpenter, Jelisa Simmons, and Lissette Wantland.

There are also 5 motions to dismiss with prejudice for failure to provide a Plaintiff Fact Sheet on the following Plaintiffs: April Flores, Samantha Taylor, Marcella Mathia, Erica Loftis, and Taneaia Rorak.

I. Procedural Background

On May 13, 2013, the Supreme Court designated litigation involving the Mirena contraceptive device be consolidated as a multicounty litigation in Bergen County, New Jersey before Superior Court Judge Brian R. Martinotti. Since then, 26 Case Management Orders, in addition to the initial Case Management Order, have been issued in the pending litigation. Case Management Order #3, dated August 23, 2013, regarded the Plaintiff Fact Sheet. Paragraph 3 explains that the Plaintiff Fact Sheet (hereinafter 'PFS') is a convenient form of interrogatories and requests for document production. It is governed by the standards applicable to written discovery under Rules Governing the Courts of the State of New Jersey. Paragraph 7 requires every Plaintiff to provide Defendant's Counsel with a PFS that is "substantially complete in all respects." This means all applicable questions must be answered, there must be a signed Declaration by the Plaintiff included, duly executed releases Authorizations must

be provided, and responsive documents requested in the PFS must be produced to the extent they are in Plaintiff's possession.

Paragraph 17 of CMO 3# addresses non-compliance with the aforementioned requirements. Specifically, any Plaintiff who fails to comply with their PFS obligations as outlined in CMO #3 may have their claims dismissed. If Defendant has not received a PFS that is substantially complete, as previously described, from a Plaintiff within 30 days following the prescribed due date, Defendant must send a Notice of Overdue Discovery to Plaintiff's counsel identifying the discovery overdue and explaining that unless Plaintiff complies with the Court's discovery order, the case may be dismissed. If Defendant has still not received a completed PFS within 30 days of the notice, Defendant was allowed to move before this Court for an Order dismissing the Complaint without prejudice. Upon filing, Plaintiff had 30 days to file a response either (1) certifying Plaintiff has served Defendant with a completed PFS, that Defendant has received it, and attaching appropriate documentation of that receipt or (2) opposition to the motion.

If this Court grants Defendant's motion to dismiss without prejudice, Plaintiff has 90 days to serve Defendant with a completed PFS or moves to vacate the dismissal. If Plaintiff fails to do so within 90 days after the entry of the Order of Dismissal without Prejudice, the order will be converted to a Dismissal with Prejudice upon Defendant's motion.

II. The Present Motions:

A. Motion to Dismiss without Prejudice to Failure to Provide a PFS

As to the 4 Plaintiffs who have failed to provide a PFS, Bayer sent a Deficiency Letter to each of the Plaintiffs' Counsel, indicating the missing core criteria and their intention to file a Motion to Dismiss if the deficiency was not corrected. Pursuant to CMO #24, Plaintiff would have 30 days to cure such deficiency. On July 17, 2014 Defendant's Counsel wrote a correspondence to Gregory Spizer, co-lead counsel for Plaintiffs, identifying the Plaintiffs who have not provided their PFS. The correspondence further indicated Defendant's intention to

file a Motion to Dismiss if the deficiencies were not corrected. None of the affected Plaintiffs cured their deficiencies. Therefore, pursuant to CMO #24, which allows Defendants to move for dismissal subject to CMO #3, this Court GRANTS Defendants motion to dismiss without prejudice. Plaintiffs have 90 days from today, August 26, 2014, to cure their deficiencies or Bayer is permitted to file a Motion to Dismiss with Prejudice.

B. Motion to Dismiss with Prejudice to Failure to Provide a PFS

As to the 5 Plaintiffs who Defendants are seeking to dismiss with prejudice, all 5 Plaintiffs were previously dismissed without prejudice on May 5, 2014. These Plaintiffs subsequently had 90 days to cure, or Defendants could seek to dismiss their claims with prejudice. On July 17, 2014 Defendant's Counsel wrote a correspondence to Gregory Spizer, co-lead counsel for Plaintiffs, identifying the Plaintiffs who have not provided their PFS. The correspondence further indicated Defendant's intention to file a Motion to Dismiss with prejudice if the deficiencies were not corrected. None of the affected Plaintiffs cured their deficiencies. Therefore, pursuant to CMO #24, which allows Defendants to move for dismissal subject to CMO #3, this Court GRANTS Defendants motion to dismiss with prejudice.